LABOUR AND EMPLOYMENT DEPARTMENT

The 1st December, 1966

No. 566-3Lab-66/1671.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Escorts Limited, Faridabad :—

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 33 of 1966

BETWEEN THE WORKMEN AND THE MANAGEMENT OF M/S ESCORTS LTD., FARIDABAD

Present:—

Shri R.N. Roy on behalf of the workmen.

Shri K.K. Khullar on behalf of the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/s Escorts, Ltd., Faridabad, the Government,—*vide* their Gazette notification No. 558-SF-III-Lab-1-66, dated 17th August, 1966 and in exercise of the powers vested in them under section 10(1) (c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the matter mentioned below :—

Whether the termination of services of Shri Manak Singh Kochar is justified and in order ? If not, to what relief he is entitled ?

Usual notices were issued to the parties. The workmen filed a statement of their claim and the respondent management filed a written statement denying the claim of the workmen and the grounds on which it is based. The statement of claim filed on behalf of the claimant is a fairly lengthy document which contains also the agruments in support of the pleas contained in the statement of claim. Shri R. N. Roy, the authorised representative of the claimant, however, made a statement before issues on 23rd September, 1966 which contains the pleadings of the claimant in precise terms. This statement is reproduced below:—

"My only pleas are that the action has been taken by the management against Shri Manak Singh Kochar merely to victimize him on account of his bona fide trade union activities and that the termination of services of the claimant by the management amounts to "retrenchment" within them meaning of section 2 (OO) and section 25 F of the Industrial Disputes Act, 1947 and the management have not complied with the prerequisites of section 25 F of the Industrial Disputes Act, 1947 and therefore the retrenchment is illegal and invalid. Claimant is, therefore, entitled to be reinstated with continuity of service and full back wages. I have no other plea in the case."

The management denied that the termination of services of the claimant Shri Manak Singh Kochar by them was retrenchment under the Industrial Disputes Act, 1947. It was denied that the management had terminated the services of the claimant as a measure of victimization on account of his trade union activities. It was alleged that the services of the claimant were terminated by an order of discharge.

The following issues were framed in the case :—

(1) Whether the termination of services of the claimant Shri Manak Singh Kochar by the management amounts to retrenchment within the meaning of sections 2(OO) and 25 F of the Industrial Disputes Act, 1947 ?

(2) Whether the services of the claimant have been terminated by the management to victimize him for his bona fide trade union activities ?

(3) If issue No. 1 or issue No. 2 is decided in favour of the claimant, whether the termination of services of Shri Manak Singh Kochar is justified and in order ? If not, to what relief he is entitled ?

Issue No. 1.—The learned representative of the claimant appears to be under the belief that a termination of service can amount to retrenchment within the meaning of section 2(OO) and section 25 F of the Industrial Disputes Act, 1947 even if the termination of service is not of the surplus staff. He has referred to the vary wide terms of the definition of the word retrenchment as given in section 2(OO) of the Act. This is not a new point raised for the first time. The point has been raised before the Supreme Court of India as well as before the High Courts in India a number of times and judicial opinion is now unanimous that the termination of service of an employee before being adjudged as retrenchment under section 2(OO) and section 25 F of the Industrial Disputes Act, 1947 must contain the essential ingredient

of discharge of surplus staff or surplus labour by the employer. The point has been exhaustively discussed by the Supreme Court in its judgement reported as 1957-I-LLJ-243 Barsi Light Railway Company, Ltd. and another *vs.* Joglekar (K.N. and others). Their Lordships on page 252 of the report have been pleased to observe as follows :—

> "For the reasons given above, we hold, that retrenchment as defined in S. 2(OO) and as used in section 25F has no wider meaning than the ordinary, accepted cannotation of the word: it means the discharge of surplus labour or staff by the employer for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action.....
> .....
> .....on our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry."

The Bombay High Court in their judgement reported as 1962-I-LLJ-56 (National Garage, Nagpur *vs.* Consavles, J.) have followed the above ruling of the Supreme Court and have held as follows :—

> "Accordingly it must be held that retrenchment within the meaning of the Industrial Disputes Act, means discharge of surplus labour or staff in a continuing or running industry. The question whether the termination of services amounts to retrenchment must be determined in each case on the facts and circumstances of that case. If the termination of services is found to be due to the reason that the workman discharged was surplus, i.e., in excess of the requirements of the business or the industry concerned, it will amount to retrenchment within the meaning of the Act. If the termination of services is due to any other reason, it will not constitute retrenchment."

The Punjab High Court also have taken the same view in 1962-I-LLJ-577, (British India Corporation Ltd. *vs.*, Industrial Tribunal, Punjab and others) and 1962-I-LLJ-563 (Amritsar Rayon and Silk Mills (Private), Ltd. *vs.* Industrial Tribunal, Punjab and others) In the latter ruling, Justice Shri K.L. Gosain has been pleased to observe as follows :—

> "The words 'for any reason whatsoever' occurring in section 2(OO) of the Act quality only the word 'retrenchment' and not the words 'termination' by the employer of their service. The retrenchment may be made for any reason whatsoever but it must essentially be 'retrenchment' which according to the ordinary connotation means the discharge of surplus labour."

The learned representative of the management cited a number of other rulings also in which the same view has been taken. Under section 2(OO) of the Industrial Disputes Act, 1947 every retrenchmentis a termination of service but every termination of service is not a retrenchment. If the termination of service is of the surplus staff, it amounts to reternchment provided it satifies the other ingredients of the definition given in section 2(OO) of the Act. If the termination is not on account of the staff being surplus, it cannot amount to retrenchment within the meaning of section 2(OO) of the Industrial Disputes Act, 1947.

In the present case it is no body's case that the claimant Shri Manak Singh Kochar was discharged by the management because he had become surplus with them. The claimant's case is that he has been discharged to victimize him on account of his legitimate trade union activities. The management's case is that he has been discharged because he was still continuing as a probationer and his work had not been satisfactory. The essential ingredient of surplusage being missing in the present case, the discharge of Shri Manak Singh Kochar claimant by the management cannot amount to retrenchment. Issue No. 1 is, therefore, decided against the claimant and in favour of the management.

Issue No. 2.—The onus of proving victimization was on the claimant and he has not led any evidence on this issue excepting his own testimony given on 28th October, 1966. Mere allegation of victimization would not do. There must be postive evidence on the record to prove that the action of the management was *mala fide* and the termination of service had been effected simply to victimize the employee. Even in his own testimony, Shri Manak Singh Kochar claimant has not any where said that his services were terminated by the management as a measure of victimization. All that he has said is that the union of the workers of the respondent factory came into existence in August, 1965 and that he had been its Vice-President from its very inception till the time of his discharge and that he used to address gate meetings of the workers of the respondent factory. Even if this part of the testimony of Shri Manak Singh Kochar is believed to be true, this does not prove that the management were only victimizing him in discharging him from service. Shri Manak Singh Kochar in his testimony has admitted that his union has one President, two Vice-President one General Secretary, two Cashiers and twelve members of the Executive Committee. He further admits that at the time of his discharge about four hundred workmen from Plant No. 2

2 and about eight hundred workmen from Plant No. 1 were member of his union. Not a single one of the office bearers or committee members or members of the union has come forward to depose in favour of the claimant that he has been discharged merely to victimise him on account of his trade union activities. The statement of the claimant that he used to address gate meetings and a record of the proceedings of gate meetings was kept by the union does not appear to be correct. Although he states that he used to check that record to see whether it was correct regarding what he said at the meetings, he does not know whether such record was kept in a register or on loose sheets. No such records has been produced in the present proceedings. When there was a specific issue as to victimization and the onus of that issue was on the claimant, it was his duty to produce the alleged record of his speeches, if any given at the gate meeting alleged to have been addressed by him I have not been impressed by the testimony of the claimant that he used to address gate meetings and record of these meetings was kept by the union. The claimant filed an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 claiming the difference in wages to which he would have been entitled if he had been confirmed by the management in his appointment. in that application he had pleaded that he should be treated as having been confirmed by the management in his appointment. In that application he had pleaded that he should be treated as having been confirmed by the management and allowed the difference in wages. The management contested that application and pleaded that the climant had not been confirmed because his work had not been satisfactory and he was continuing as a probationer and therefore was not entitled to the difference in wages claimed by him The file of that case. Application No. 344 of 1965) is linked with the present file. This Court after considering the documentary and oral evidence produced by the parties in that case in its order dated 6th November, 1965 found as follows :—

> "After carefully going through the entire record of this case I am satisfied that although the management we re not satisfied at all with the work of the applicant they kept h'm in service and accommodated him in every way to enable him to improve his work. The fact that they did not discharge him from service should not go against them. The representative of the applicant argued that the respondent management were not justified in keeping the applicant on probation for such a long time and the applicant should therefore be deemed to have been confirmed in their service. He cited 1957-Labour Appeal Case-644 in support of his contention. This rulling even if it lays down the correct law does not fully support the applicant's case. It states that whether an inference of confirmation should be drawn and the stage at which it should be drawn are questions of fact depending upon the evidence in each case. The evidence in this case leads to the inevitable conclusion that such an inference should not be drawn in favour of the applicant. The learned representative of the respondent management cited 1964-1-LLJ-9 in support of his contention that an employee appointed on probation continues as a probationer even after the period of probation if at the end of this period his services had either not been terminated or he is confirmed. This is a most recent decision of the Supreme Court of India. It was argued by the representative of the applicant that under the standing orders applicable to the applicant he is tobe deemed to have been confirmed with effect from 19th Feburary, 1963. It was admitted by him that the Certified Standing Orders copy Ex. RP/4 are not applicable to the applicant because these Standing order, came into force on 22nd June, 1964. The applicant also in his testimony before this Court admits that before 19th August, 1963 no Certified Standing Orders were applicable to the resopondent concern. The representative of the applicant however, contended that model Standing Orders governed the applicant's case. He relied upon standing order No. 2(b) of the model standing oders. This order defines a permanent workman and includes within this definition any person who has satisfactorily completed a probationary period of three months. It cannot by any stretch of imagination be said that the work of the applicant as a probationer was satisfactory. The management are the best judge in this respect and they have found that the applicant's work is not satisfactory. I am therefore of the view that neither under the appointment letter Ex.APP/1 nor under the model standing orders which are claimed to be applicable to the applicant, he can be deemed to have been confirmed from 19th Feburary, 1963 or from any other date".

That finding is binding on the parties as it has not been set aside in any proceedings. It is clear from that finding that the work of the claimant was not satisfactory and therefore the management would have been within their rights to discharge him from their service as legally he still continued to be a probationer. This is exactly what the management have now done. They have discharged him from servicebecause they were not satisfied with his

work. It was not incumbent upon them to give him any notice or wages in lieu of notice They, however, offered him one month's wages before terminating his services. This fact cannot go against them. The learned representative of the claimant argued that under the Certified Standing Orders an employee can be discharged under clause 42 only and that clause 42 of the Certified Standing Orders does not cover the present discharge. In the first place in the order passed on the application of the claimant under Section 33(C)(2) of the Industrial Disputes Act, 1947, it has been found that the Certified Standing Orders were not applicable to him. In the second place clause 42 of the Certified Standing Orders is an enabling provision and it has not the effect of disabling the management from discharging a workman who is yet a probationer and whose work is not satisfactory. The claimant has failed to prove that the management have discharged him from service to victimize him on account of his bona fide trade union activities. Issue No. 2 decided against the workmen.

Issue No. 3.—As the termination of services of the claimant by the management did not amount to retrenchment, the fact that the management did not comply with the prerequisite of Section 25 F of the Industrial Disputes Act, 1947 in as much as they did not pay any retrenchment compensation to the claimant does not render the termination of services of the claimant by the management unjustified. The other plea of the claimant that the termination of his services was to victimizing him has also been decided aginst him. The termination of his services cannot be said to be unjustified on that ground also. The learned representative of the claimant in his statement before issues clearly stated that he had no other plea in the case. The termination of services of the claimant Shri Manak Singh Kochar by the management of M/s Escorts Limited, Faridagad is, therefore, justified and the claimant is not entitled to any relief

In the circumstances of this case, the parties are left to bear their own costs of these proceedings

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court Rohtak

Dated: 25-11-1966

The 2nd December, 1966.

No. 632-3 Lab. 66/1784.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Act No. XVI of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of Municipal Committee Beri.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

REFERENCE NO. 52 OF 1962

BETWEEN THE WORKMEN AND THE MANAGEMENT OF THE MUNICIPAL COMMITTEEE, BERI.

Present—Nemo. for the workmen.
Nemo. for the respondent.

AWARD

An industrial dispute having arisen between the workmen and the management of the Municipal Committee, Beri, the State Government,—*vide* its gazette notification No. 3114-IV-Lab.-III-62/30494, dated 18th October, 1962 referred to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, the matter mentioned below:—

Whether Sarvshri Siri Chand, Rameshwar, Richhpal, Jogi, Daida, Randhir and Bishamber Sweepers are entitled to full wages for the period from 29th May, 1961 to 21st September, 1961? If so, with what details?

On receipt of the reference usual notices were issued to the parties. Proceedings in this reference were adjourned *sine die* by my learned predecessor because of a stay order received from the Punjab High Court in Civil Writ No. 1446 of 1961. As nothing was heard from the parties all these years, notices under registered A.D. covers were sent to them for to-day to let this Court know the fate of the writ petition and for

further proceedings in this reference. Neither the Municipal Committee nor the workmen have been represented at to-day's hearing. The registered A.D. notices sent to both the parties have been served upon them and the acknowledgements are on record. The Municipal Committee in response to the notice have written to say that the writ of the Municipal Committee was rejected by a Full Bench of the High Court and all the amounts due to the claimants were paid to them and nothing is due to them now. The workmen though served are neither present nor have sent any reply in writing. Their absence and silence ard understandable. As stated in the letter of the Municipal Committee received by this Court in response to the notice of hearing for to-day, their claims have been met by the Municipal Committee. In these circumstances this reference has now become infructuous and no adjudication in respect of it is required. It is, therefore, filed. No order as to costs.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

Dated the 24th November, 1966.

No. 576-3Lab.66/1786.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of M/S Sunrise Potteries Bahadurgarh, district Rohtak.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABUOR COURT, ROHTAK

REFERENCE No. 41 OF 1966

BETWEEN THE WORKMEN AND THE MANAGEMENT OF M/S SUNRISE POTTERIES, BAHADURGARH (DISTRICT ROHTAK).

Present :—Nemo. for he workmen.
Nemo. for the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/S Sunrise Potteries, Bahadurgarh (District Rohtak), the State Government,—*vide* their gazette notification No. 380-SF-III-I-66/17739, dated 13th June, 1966 referred to the Labour Court, Jullundur, for adjduication under Section 10(1) (c) of the Industrial Disputes Act, 1947 the matters mentioned below:—

(1) Whether the workmen should be provided with attendance cards? If so, with what details?

(2) Whether the action of the management in terminating the services of the following workmen is justified and in order? If not to what relief the workmen are entitled to?

(1) Shri Habibullah.

(2) Shri Ram Nagina.

This reference has since been withdrawn by the Government from the Labour Court, Jullundur and transferred to this Court,—*vide* gazette notification No. 10434-III-Lab-1-1966, dated 3rd October, 1966. Notices were sent to the parties for 2nd November, 1966. On that date Shri R.L. Gupta was present on behalf of the management but no one was present on behalf of the workmen. The case was accordingly adjourned for to-day and a fresh notice under registered A.D. cover was issued to the Bahadurgarh Potteries and General Labour Union, Bahadurgarh at whose instance the dispute had been referred for adjudication by the Government. That notice has been served upon the union and the acknowledgement is on record. The union have also sent a letter in reply to that notice in which they have stated that the dispute has been settled between the workmen and the management on 30th September, 1966 and the same may therefore be filed. In these circumstances this reference has now become infructuous and is hereby filed. The parties will bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

Dated the 24th November, 1966.

The 3rd December, 1966

No. 21-III-Lab. 66/1321.—In supersession of the Punjab Government notification No. 10039-III-Lab-II-61/34804, dated the 26th October, 1961 and all other notifications issued in this behalf and in exercise of the powers conferred by clause (c) of section 2 of the Industrial Employments (Standing Orders) Act, 1946, the Governor of Haryana is pleased to appoint a Deputy Labour Commissioner of the State of Haryana to perform all the functions of a Certifying Officer under the said Act.

B. L. AHUJA,
Secretary to Government, Haryana,
Labour and Employment Departments.

INDUSTRIES AND INDUSTRIAL TRAINING DEPARTMENT

The 3rd December, 1966

No. 598-8IB-66/705—In exercise of the powers conferred by sub-section (2) of of Section 26 of the Apprentices Act, 1961, the Governor of Haryana is pleased to appoint the Director of Industries and Industrial Training Department, Haryana as the State Apprenticeship Advisor, Haryana State with effect from 1st November, 1966.

The 6th December, 1966

No. 598-8IB-66/709.—In exercise of the powers conferred under sub-section (1) of Section 27 of the Apprentices Act, 1961, the Governor of Haryana is pleased to appoint the officers mentioned in column 2 of the Schedule (Annexed hereto) as Deputy and Assistant Apprenticeship Advisers with the designation and with areas of jurisdiction as shown in columns 3 and 4 thereof respectively to assist the State Apprenticeship Advisor for the Haryana State in the performance of his functions .—

SCHEDULE

Serial No.	Post held	Appointed as	Areas of jurisdiction
1	2	3	4
	(A) Headquarters of the Director of Industries and Industrial Training		
1	Deputy Director of Industrial Training (Technical)	Deputy Apprenticeship Adviser	Haryana State
2	Assistant Director of Industrial Training (Technical)	Assistant Apprentice-ship Adviser	Haryana State
	(B) Industrial Training Institutes in Haryana under the Director of Industries and Industrial Training Haryana		
1	Principal, I. T. I., Hissar	Assistant Apprentice-ship Adviser	Hissar, Fatehabad Tehsils Hissar District
2	Sirsa	Ditto	Sirsa Tehsil of Hissar District
3	Bhiwani	Ditto	Bhiwani and Hansi Tehsils of Hissar District
4	Rohtak	Ditto	Rohtak and Jhajjar Tehsils of Rohtak District
5.	Sonepat	Ditto	Sonepat and Gohana Tehsils of Rohtak District
6.	Gurgaon	Ditto	Gurgaon, Rewari, Nuh and Ferozepore Jhirka Tehsils of Gurgaon District
7.	Palwal	Ditto	Palwal Tehsil of Gurgaon District

1	2	3	4
8	Faridabad	Assistant Apprenticeship Adviser	Balabgarh Tehsil of Gurgaon District
9	Karnal	Ditto	Karnal Tehsil of Karnal District
10	Panipat	Ditto	Panipat Tehsil of Karnal District
11	Kaithal	Ditto	Kaithal and Thanesar Tehsils of Karnal District
12	Ambala	Ditto	Ambala and Naraingarh Tehsils of Ambala District and Part of Kharar Tehsil included in Haryana (Pinjore and Mani-Majra Kanungo Circles)
13	Yamuna Nagar	Ditto	Jagadhri Tehsil of Ambala District
14	Mohindergarh	Ditto	Whole of the Mohindergarh District
15	Narwana	Ditto	Whole of the Jind District

No. 7882-IB/66-782.—The Governor of Haryana is pleased to make the following appointments from the dates mentioned against column 4 below:—

Serial No.	Name of the Officer	Designation	With effect from
1	Shri S. P. Talwar	Deputy Director, Industrial Training	1st November, 1966
2	Shri Harinder K. Singh	Deputy Directress Industrial Training (Women)	1st November, 1966
3	Shri B. N. Vaid	Assistant Apprenticeship Advisor	1st November, 1966
4	Shri T. N. Chaudhry	Assistant Director, Industrial Training	1st November, 1966
5	Shri R. K. Sharma	Assistant Director, Industrial Training	1st November, 1966
6	Shri S. N. Nanda	Assistant Director, Industrial Training	1st November, 1966
7	Shri B. D. Garg	Assistant Director, Industrial Training	1st November, 1966

R. N. CHOPRA,

Secretary to Government of Haryana,
Industries and Industrial Training Department.

REVENUE DEPARTMENT

WAR JAGIR

The 1st December, 1966

Corrigendum No. 509-R(IV)-66/1060.—In Punjab Government (Revenue Department) notification No. 5157-JN-III-66/10425, dated the 6th June, 1966, published in Joint Punjab Government Gazette, dated the 17th June, 1966, the words and figures "2(a)(ia) and 3(IA)" shall be substituted for the words and figures "2(a)(i) and 3(I)(a)" appearing there in.

Corrigendum No. 505-R(IV)-66/1063.—The number and date of Punjab Government (Revenue Department) notification published in Joint Punjab Government Gazette, dated the 8th July, 1966, should be read as "8880-JN(III)-66/15481, dated the 29th June, 1966" instead of "8880-JN(III)-66/15480, dated the 24th June, 1966" appearing therein.

Corrigendum No. 510-R(IV)-66/1068.—In Punjab Government (Revenue Department) notification No. 7843-JN-III-66/15486, dated the 29th June, 1966 published in Joint Punjab Government Gazette, dated the 15th July, 1966, the words and figures "Kharif, 1965" shall be substituted for the words and figures "Kharif, 1964" appearing therein.

Corrigendum No. 598-R(IV)-66/1073.—In Punjab Government (Revenue Department) notification No. 7714-JN-III-66/16732, dated the 18th July, 1966 published in Joint Punjab Government Gazette, dated the 12th August, 1966, the words "Charkhi Dadri" shall be substituted for the word "and" appearing therein.